

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

KEITH HENDERSON, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:13CV1698 SPM  
 )  
 LARRY BUTT, )  
 )  
 Defendant. )

**MEMORANDUM AND ORDER**

This matter is before the Court upon the motion of Keith Henderson (registration no. 194548), an inmate at Georgia State Prison, for leave to commence this action without payment of the required filing fee. Based on the information submitted, the Court finds that plaintiff does not have sufficient funds to pay a partial initial filing fee. Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff’d 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Plaintiff brings this action under 42 U.S.C. § 1983 against Larry Butt, who is alleged to be a supervisor for Access Securepak located in St. Louis, Missouri. Plaintiff alleges that Mattie

Henderson purchased a Christmas package for him through Access Securepak for \$110.00. Plaintiff claims that when he received the package, it only contained \$80.00 worth of goods. Plaintiff seeks an award of compensatory damages.

To establish a *prima facie* case under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) the action occurred “under color of law” and (2) the action is a deprivation of a constitutional right or a federal statutory right. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). Neither of these elements are satisfied in this case. Butt is not a state actor, and the allegations in the complaint do not state a constitutional violation. Thus, the complaint fails to state a claim upon which relief can be granted.

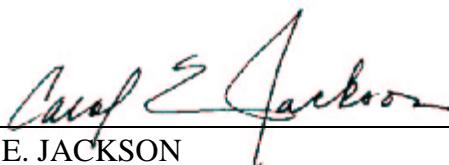
Accordingly,

**IT IS HEREBY ORDERED** that plaintiff’s motion to proceed in forma pauperis [Doc. 2] is **granted**.

**IT IS FURTHER ORDERED** that the Clerk shall direct the agency having custody of plaintiff to forward payments from plaintiff’s prisoner account to the Clerk of Court each time the amount in the account exceeds \$10.00 until the entire \$350.00 fee is paid in full.

**IT IS FURTHER ORDERED** that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

Dated this 30th day of August, 2013.



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CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE